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SUBJECT: EU ISSUES MIXED REPORT ON BOLIVIAN REFERENDUM

11. Summary: The European Union Electoral Observation Mission (EU EOM) published on January 27 its Preliminary Statement regarding the January 25 constitutional referendum. Although the report says the referendum was credibly completed and the "electorate could in general freely exercise their right to vote," it also makes several criticisms: the lack of a functioning judicial branch; a high level of propaganda in state-owned media; problems with the voter rolls; government pressure on public employees to vote for the constitution; bias by the National Electoral Court (CNE); lack of secret voting in some districts; and the disenfranchisement of an estimated two million Bolivians. End summary.

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First, the Good News
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12. The European Union Electoral Observation Mission (EU EOM)'s Preliminary Statement on Bolivia's January 25 constitutional referendum lauds the government for a referendum in which the "electorate could in general freely exercise their right to vote" and "a generally positive atmosphere," and compliments the National Electoral Court (CNE) specifically for administering the elections in a "largely professional, transparent, and independent manner."

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Democratic Institutions Failing
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13. The bulk of the report, however, is dedicated to chronicling deficiencies in the electoral process. Placing the referendum in a larger Bolivian context, the report criticizes the increasing weakness of Bolivia's judicial branch. It notes that both the country's Constitutional Tribunal and the CNE are "not functioning properly because they have no quorum or lack key members." The report states there is no legislative body to review or check executive branch actions, adding "Vacant posts in the Constitutional Court impede... legal redress for constitutional matters and fundamental rights." The report further questions the overall legality of the referendum: "Some members of the Supreme Court have indicated that... the whole process to pass the proposed constitution and to call for a Referendum on the same might be unconstitutional.... The Constitutional

Court did not have an opportunity to review the referendum question for the ballot paper...." (Note: the Constitutional Tribunal (or Court) has been essentially defunct for over a year and has only one out of its allotted ten members. The Tribunal must have a quorum of three people to operate. The last member has threatened to resign over executive branch actions. The Tribunal now has a backlog of over 3,500 cases, or more than three years of work. End note.)

14. The report goes on to note that social groups affiliated with the ruling Movement Toward Socialism party pressured the legislative branch to accede to the vote on the proposed constitution. "To put pressure on the politicians in Congress, some 100,000 citizens marched from Oruro to La Paz, demanding that a referendum be held on the constitution. President Evo Morales joined the march. On 21 October 2008 a qualified majority of Congress bowed to this social pressure." (Note: In one of a number of earlier similar "social pressure" marches, government-affiliated social groups surrounded the Constituent Assembly and prevented opposition members from voting to amend the proposed constitutional text. End note.)

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State-Sponsored Propaganda
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15. The EU EOM found an inappropriate and widespread use of "institutional propaganda" in the run-up to the referendum: "Several Governmental Ministries openly made propaganda for the (proposed constitution) through radio and TV spots and through newspaper advertisements." On the other hand, the report noted that some departments (states) contributed funds for the constitution, while others contributed funds against it. Perhaps most importantly, it found that state-owned media was used to manipulate voter sentiment. "The state-owned television channel and radio station... showed clear bias in favor of the 'Yes' campaign... (State television) awarded 46 percent of its referendum information during the main prime time news editions to the 'Yes' campaign and only four percent to the 'No.'" The report also noted that according to law, "candidates and political parties shall be guaranteed equal conditions of access to the state-owned media through the broadcasting of free air time. In an unwelcome initiative, this guarantee of equal access was suspended."

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Faulty Electoral Register
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16. The report made note of a significant drop in registered voters (from 4.05 million to 3.89 million, or over 150,000 voters). The report cited civil society groups--such as election observers Bolivia Transparente--and former CNE members as having "doubts as to whether the register contains the names of all those Bolivians registered to vote in accordance with the principle 'one person, one vote.'" The report stated that many civic society groups were "concerned that the formulation of the register may be such to allow multiple voting."

17. According to the EU EOM, there was significant concern among the voting population before the referendum about the security of the electoral register. The electoral register depends on the civil registry as a main source of data, and the EU EOM report noted that a 2006 national program designed to provide free civil registration was heavily criticized: "Its modus operandi was lacking transparency as regards data collection procedures and consolidation methods." As a result, there are concerns that some people are voting multiple times while others have been dropped from the electoral register without cause. On the day of voting, "EU observers noted that 53 percent of those who had been removed from the electoral register were not adequately informed by polling station staff as to why they were removed and what their next course of action should be."

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Pressure Techniques
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¶18. The EU EOM found the government and government-affiliated social groups inappropriately pressured people to vote for the constitution. The report said that in Pando and other departments, "public employees were allegedly pressured to attend campaign activities in favor of the constitution at the risk of losing their jobs. It was reported to the EU EOM that some had lost their jobs at the Prefecture (state government) for taking part in the 'No' campaign." The report also noted that "several influential (government-aligned) organizations pressured their members to attend campaign rallies and issued direct instructions informing them on how to vote."

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CNE Bias
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¶19. As part of an education campaign before the referendum, the report notes that the CNE published and distributed two million booklets comparing the then-current constitution with the proposed text and that the CNE purposefully left out key elements in its analysis. "The CNE acknowledges that potentially contentious points, including religion, indigenous traditional justice, the use and property of natural resources and the constitutional acknowledgment of coca were left out to avoid political polemics." The report also criticized the CNE's voting materials, saying, "The formulation of the question on the ballot paper did not seem totally neutral, and the Constitutional Court did not review the formulation."

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Lack of Secret Voting
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¶10. The report stated that the issue of 'community voting' was "highlighted by several interlocutors who indicate that the principle of the secrecy of suffrage may be violated in that the vote of some rural communities is decided upon in advance by assembly or by the union. The EU EOM did not observe this practice." The EU EOM states "Secrecy of the vote was generally respected in 91 percent of observed polling stations, with few exceptions relating to voters who were either accompanied by non-authorized persons or were instructed by either delegates or polling stations staff on how to vote." (Note: According to the initial OAS report, OAS observers delivered to the CNE "evidence of violations of secret voting in six locations of Omasuyos, La Paz, and in the Chapare, Cochabamba." End note.)

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Disenfranchisement
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¶11. Bolivia's population is estimated at between nine and ten million people. The report criticized that "no provisions were made for out-of-country voting," which led to the disenfranchising of approximately two million Bolivians living abroad.

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Results Consolidation
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¶12. The report complimented the overall administration by the CNE, saying that "results consolidation at departmental electoral court and CNE levels has so far been conducted in a satisfactory manner. Results from each polling station are scanned and placed online for public perusal, lending transparency to the consolidation process."